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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NGOC LAM CHE, an individual

Plaintiff,

vs.

LONDINA, LLC, a limited partnership;
SAMUEL ERLICH, an individual, dba
“CLYDE’S LIQUOR”;

Defendants.

Case No.: 5:16-cv-4027

COMPLAINT FOR

- (1) VIOLATION OF THE UNRUH
CIVIL RIGHTS ACT (CALIFORNIA
CIVIL CODE §§ 51, 52);**
**(2) VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990**

I.
SUMMARY

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3 **1.** This is a civil rights action by Plaintiff Ngoc Lam Che (“Plaintiff”) for discrimination
4 at the building, structure, facility, complex, property, land, development, and/or surrounding
5 business complex known as: 3963 Snell Ave., San Jose, California 95136 (the “Property”). Plaintiff
6 frequents the area at least once a week for dining and entertainment.

7 **2.** Plaintiff seeks damages, injunctive and declaratory relief, attorney’s fees and costs
8 pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) and related
9 California statutes¹ against Defendants, the tenant and/or owner of the Property, LONDINA, LLC, a
10 limited partnership (“Landlord”); and the tenant SAMUEL ERLICH, an individual, dba “CLYDE’S
11 LIQUOR” (Tenant) (Landlord and Tenant are collectively referred to as “Defendants”).

II.
JURISDICTION

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14 **3.** This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
15 claims.

16 **4.** Supplemental jurisdiction for claims brought under parallel California law – arising
17 from the same nucleus of operative facts – is predicated on 28 U.S.C § 1367.

18 **5.** Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III.

VENUE

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21 **6.** All actions complained of herein take place within the jurisdiction of the United
22 States District Court, Central District of California, and venue is invoked pursuant to 28 U.S.C. §
23 1391(b), (c).

IV.

PARTIES

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26 **7.** Defendants are, or were at the time of the incident, the owners, operators, lessors
27 and/or lessees of the Property, and consist of a person (or persons), firm, company, and/or

28 ¹ Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may
amend his complaint at a later time upon discovery of facts which give rise to such a claim.

FACTS

standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008). These barriers prevented Plaintiff from enjoying full and equal access to the Property.

12. Plaintiff was deterred from visiting the Property as a result of the accessible barriers he encountered. He continues to be deterred from visiting the Property because of the future threats of injury created by these barriers. Plaintiff would patronize the Property once the barriers are removed.

13. Defendants knew that these elements and areas of the Property were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Defendants have the financial resources to remove these barriers from the Property (without much difficult or expense), and make the Property accessible to the physically disabled. To date, however, the Defendants refuses to remove those barriers.

14. At all relevant times, Defendants have possessed and enjoyed sufficient control and authority to modify the Property to remove impediments to wheelchair access and to comply with the Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations. Defendants have not removed such impediments and has not modified the Property to conform to accessibility standards.

VI.

FIRST CAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW INCLUDING: THE UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE AMERICANS WITH DISABILITIES ACT AS INCORPORATED BY CIVIL CODE SECTION 51(f)

15. Plaintiff incorporates the allegations contained in paragraphs 1 through 14 for this claim and incorporates them herein.

16. At all times relevant to this complaint, California Civil Code § 51 has provided that physically disabled persons are free and equal citizens of the state, regardless of disability or medical condition:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or

1 medical condition are entitled to the full and equal accommodations, advantages,
2 facilities, privileges, or services in all business establishments of every kind
3 whatsoever. Cal. Civ. Code § 51(b).

4 **17.** California Civil Code § 52 provides that the discrimination by Defendants against
5 Plaintiff on the basis of his disabilities constitutes a violation of the anti-discrimination provisions of
6 §§ 51 and 52.

7 **18.** Defendants' discrimination constitutes a separate and distinct violation of California
8 Civil Code § 52 which provides that:

9 Whoever denies, aids or incites a denial, or makes any discrimination or
10 distinction contrary to section 51, 51.5 or 51.6 is liable for each and every offense
11 for the actual damages, and any amount that may be determined by a jury, or a
12 court sitting without a jury, up to a maximum of three times the amount of actual
13 damage but in no case less than four thousand dollars (\$4,000) and any attorney's
14 fees that may be determined by the court in addition thereto, suffered by any
15 person denied the rights provided in Section 51, 51.5 or 51.6.

16 **19.** Any violation of the Americans with Disabilities Act of 1990 (as pled in the Second
17 Cause of Action) constitutes a violation of California Civil Code § 51(f) thus independently
18 justifying an award of damages and injunctive relief pursuant to California law. Per § 51(f), "[a]
19 violation of the right of any individual under the Americans with Disabilities Act of 1990 ... shall
20 also constitute a violation of this section."

21 **20.** The actions and omissions of Defendants as herein alleged constitute a denial of
22 access to and use of the described public facilities by physically disabled persons within the meaning
23 of California Civil Code §§ 51 and 52. As a proximate result of Defendants' action and omissions
24 Defendants have discriminated against Plaintiff in a violation of Civil Code §§ 51 and 51.
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VII.

**SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

21. Plaintiff incorporates the allegations contained in paragraphs 1 through 20 for this claim and incorporates them herein.

22. As part of the Americans with Disabilities Act of 1990 (“ADA”), Congress passed “Title III – Public Accommodations and Services Operated by Private Entities.” 42 U.S.C. § 12181 *et seq.* The Property is one of the “private entities” which are considered “public accommodations” for purposes of this title, which includes any “restaurant, bar, or other sales or rental establishment serving food or drink.” § 301(7)(B).

23. The ADA states that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation.” 42 U.S.C. § 12182.

24. The acts and omissions of Defendants set forth herein were in violation of Plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28 CFR Part 36 *et seq.*

25. The removal of each of the barriers complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned “readily achievable” under the standards §§ 301 and 302 of the ADA. As noted hereinabove, removal of each and every one of the architectural barriers complained of herein were also required under California law. Further, on information and belief, alterations, structural repairs or additions since January 26, 1993 have also independently triggered requirements for removal of barriers to access for disabled persons per § 303 of the ADA. In the event that removal of any barrier is found to be “not readily achievable,” Defendants still violated the ADA, per § 302(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and accommodations through alternative methods that were readily achievable.

26. On information and belief, as of the date of Plaintiff’s encounter at the Property and as of the filing of this Complaint, the Defendants have denied and continues to deny full and equal access to Plaintiff and to other disabled persons, including wheelchair users, in other respects, which

28. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal Regulations adopted to implement the Americans with Disabilities Act of 1990. Plaintiff is a qualified disabled person for purposes of § 308(a) of the ADA who is being subjected to discrimination on the basis of disability in violation of Title III and who has reasonable grounds for believing he will be subjected to such discrimination each time that he may attempt to use the Property and premises.

WHEREFORE, Plaintiff prays that this court award damages and provide relief as follows:

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1 by Plaintiff and similarly situated persons with disabilities, and which provide full and equal access,
2 as required by law, including appropriate changes in policy;

3 2. Retain jurisdiction over the Defendants until such time as the Court is satisfied that
4 Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible public
5 facilities as complained of herein no longer occur, and can not recur;

6 3. Award to Plaintiff all appropriate damages, including but not limited to statutory damages,
7 general damages and treble damages in amounts within the jurisdiction of this Court, all according to
8 proof;

9 4. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and costs of this
10 proceeding as provided by law;

11 5. Award to Plaintiff prejudgment interest pursuant to California Civil 17 Code§ 3291;

12 6. Grant such other and further relief as this Court may deem just and proper.
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17 ASCENSION LAW GROUP, PC

18 DATE: July 17, 2016

19 /s/ Pamela Tsao

20 Pamela Tsao, attorney for Plaintiff

21 Ngoc Lam Che
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

ASCENSION LAW GROUP, PC

DATE: July 17, 2016

 /s/ Pamela Tsao

Pamela Tsao, attorney for Plaintiff

Ngoc Lam Che